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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RAMON ESPERANZA CARRILLO, Defendant.	Criminal Case No. 08cr1446-WQH DATE: June 16, 2008 TIME: 2:00 p.m. GOVERNMENT'S RESPONSE AND OPPOSITION TO DEFENDANTS' MOTIONS TO: (1) COMPEL DISCOVERY; (2) SUPPRESS STATEMENTS; (3) DISMISS INDICTMENT DUE TO ERROR IN GRAND JURY INSTRUCTIONS (4) LEAVE TO FILE FURTHER MOTIONS TOGETHER WITH STATEMENT OF FACTS AND MEMORANDUM OF POINT'S AND AUTHORITIES AND GOVERNMENT'S MOTIONS FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY

COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and Steve Miller, Assistant United States Attorney, and hereby files its response and opposition to defendants' above-referenced motions. Said response is based upon the files and records of this case, together with the attached statement of facts, memorandum of points and authorities.

I

STATEMENT OF FACTS

On March 1, 2007, defendant RAMON ESPERANZA CARRILLO was convicted of 8 U.S.C. § 1326 in the District of California New Mexico and was sentenced to 15 months in prison. Defendant had been deported twice. His latest deportation was after serving his sentence when he was removed through El Paso Del Norte, Texas on April 1, 2008.

Nine days later, on April 10, 2008, Border Patrol agents located defendant after following footprints in the brush four miles north of the border and 25 miles east of the Tecate Port of Entry. The agents discovered defendant while he hid among a set of boulders with five other aliens. In the field, defendant admitted that he was a Mexican citizen with no legal right to be in the United States.

II

POINTS AND AUTHORITIES

A. THE GOVERNMENT HAS AND WILL CONTINUE TO COMPLY WITH RULE 16 OF THE FEDERAL RULES OF CRIMINAL PROCEDURE

The Government has provided numerous pages of voluntary discovery. Government will continue to provide voluntary discovery when it becomes available and will comply with Rule 16 and its obligations under Brady v. Maryland, 373 U.S. 83 (1963), and 18 U.S.C. § 3500.

The Government gives specific notice of its intent to offer evidence of other acts under Rule 404(b). By this notice, the Government reserves the right to offer any evidence, of any act, that was performed by the defendant, that is referenced in any of the discovery. These acts include, but are not limited to any of defendant’s prior crossings, prior deportations, prior statements regarding citizenship and any prior felony. The Government also intends to use evidence related to his prior arrest and conviction for 8 U.S.C. § 1326 as relevant evidence of defendant's alienage and the fact that he had been deported. The acts also include, but are not limited to events that only become relevant once defendant's theory of the case is revealed.

B. THE GOVERNMENT DOES NOT INTEND TO OFFER DEFENDANT'S STATEMENTS FROM THE DAY OF HIS ARREST

Defendant moved this court to suppress the statements he made to the Border Patrol Agents. Defendant invoked his right to an attorney. However, the Government will offer defendant's sworn statements he made to the immigration judge and the New Mexico District Court when he admitted the elements of the same offense for which he is currently charged. Nor is there any need to hold an evidentiary hearing to determine the voluntariness of his sworn statements, in the presence of his counsel, at a time a Federal District Court Judge necessarily found his plea to be knowing and voluntary.

C. DEFENDANT'S MOTION TO DISMISS BECAUSE OF ALLEGED ERROR IN THE GRAND JURY INSTRUCTIONS SHOULD BE DENIED

Defendant argues that the indictment should be dismissed because of various instructions that were or were not given to the grand jury. United States v. Marcucci, 299 F.3d 1156 (9th Cir. 2002), and United States v. Navarro-Vargas, 408 F.3d 1184 (9th Cir. 2005), is dispositive on this issue and defendant's motion should be summarily denied.

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D. ANY LEAVE FOR DEFENDANT TO FILE FURTHER MOTIONS SHOULD BE STRICTLY LIMITED

While the government recognizes this court's discretion to permit defendant to file further motions, the Government does oppose defendant's motion to the extent it is conjectural, overly broad and invites abuse. Any need for further motions should be justified at the time they are filed, permitting both the Government to oppose on a motion-by-motion basis and this court to determine if such motions could in fact have been filed earlier. Any other course would invite an interminable and protracted motion practice, resulting in delay of trial.

E. THE GOVERNMENT'S MOTION FOR RECIPROCAL DISCOVERY SHOULD BE GRANTED

1. Rule 16(b)

The defendant has invoked Federal Rule of Criminal Procedure 16(a) in his motion for discovery. In addition, the Government voluntarily will comply with the requirements of Federal Rule of Criminal Procedure 16(a). Thus, the 16(b) provision of that rule are operable as to defendant.

The Government, pursuant to Rule 16(b), hereby requests the defendant to permit the Government to inspect, copy, and photograph any and all books, papers, documents, photographs, tangible objects, or make copies of portions thereof, which are within the possession, custody or control of defendant and which he intends to introduce as evidence in his case in chief at trial.

The Government further requests that it be permitted to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case, which are in the possession or control of the defendant, which he intends to introduce as evidence in chief at the trial or which were prepared by a witness whom the defendant intends to call as a witness. The Government also requests that the Court make such orders as it deems necessary under Rule 16(d)(1) and (2) to ensure that the Government receives the discovery to which it is entitled.

2. Rule 26.2

Federal Rule of Criminal Procedure 26.2 requires the production of prior statements of all witnesses except the defendant. The Rule thus provides for the reciprocal production of Jencks statements. As stated in pertinent part:

> After a witness other than the defendant has testified on direct examination, the court, on motion of a party who did not call the witness, shall order the attorney . . . to produce, for the examination and use of the moving party, any statement of the witness that is in their possession . . . .

Fed. R. Crim. P. 26.2(a).

The time frame established by the Rule requires the statement to be provided after the witness has testified, as in the Jencks Act. Therefore, the Government hereby requests that defendant be ordered to supply all prior statements of defense witnesses by a reasonable date before trial to be set by the court. This order should include any form these statements are memorialized in including, but not limited to, tape recordings, handwritten or typed notes and reports.

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F. THE GOVERNMENT'S MOTION FOR FINGER PRINTS SHOULD BE GRANTED

The Government moves this court to permit the Government's fingerprint expert to take defendant's fingerprints in anticipation of trial testimony linking defendant to the warrant of deportation.

III

CONCLUSION

For the foregoing reasons, the Government respectfully requests that defendant's motions be denied and the Government motions be granted.

DATED: June 9, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

S/Steve Miller

STEVE MILLER
Assistant U.S. Attorney

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. RAMON ESPERANZA CARRILLO, Defendant.	Criminal Case No. 08cr1446 CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED THAT:

I, Steve Miller, am a Citizen of the United States over the age of eighteen years and a resident of San Diego county, California. My business address is 880 Front Street, San Diego, California 92101-8893. I am not a party to the above-entitled action. I have caused service of the Government's Response and Opposition to Defendant's Motions on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF system, which electronically notifies them.

1. Robert Hensler, Federal Defenders of San Diego, Inc.

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-EFC participants on this case n/a the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on June 9, 2008.

s/Steve Miller
STEVE MILLER